



DAN MORALES
ATTORNEY GENERAL

Office of the Attorney General
State of Texas

July 29, 1991

Mr. Paul G. Stuckle
Police Legal Advisor
Assistant City Attorney
Fort Worth Police Department
350 W. Belknap St.
Fort Worth, Texas 76102

OR91-344

Dear Mr. Stuckle:

The Fort Worth Police Department has received a request under the Open Records Act, article 6252-17a, V.T.C.S., for the transcript of a 911 telephone call that concerns a case currently under investigation. You sent a tape recording of the call, which you seek to withhold based on several exceptions to required public disclosure found in the Open Records Act. We have listened to the tape and agree that you may withhold the tape, or a transcript of the conversation on the tape, based on section 3(a)(8) of the Open Records Act.

We begin by addressing your assertion that this information constitutes the records of the judiciary, which are not covered by the Open Records Act. *See* V.T.C.S. art. 6252-17a, § 2(1)(G). You maintain that the information is in the constructive possession of the grand jury, since the assistant district attorney handling the case plans to present the case to the grand jury. However, information is in the constructive possession of the grand jury for purposes of the judiciary exclusion if it is produced as a result of the grand jury's investigation. Open Records Decision No. 513 (1988); *see* Open Records Decision Nos. 411 (1984); 398 (1983). This information has yet to be submitted to the grand jury; therefore, it can not be deemed to be within the constructive possession of the grand jury. Open Records Decision No. 513.

The police sergeant supervising the investigation states that he is "currently preparing a case to forward to the Tarrant County District Attorney's Office for presentation to a Grand Jury." You state that no decision to prosecute has been made in this case other than to present the facts and evidence to the grand jury. Section 3(a)(8) of the Open Records Act protects information, such as this, which contains witness statements that concern a matter still in the investigation stage. Open Records Decision No. 286 (1981). Consequently, you may withhold the tape

and a transcript of the conversation on the tape based on section 3(a)(8) of the Open Records Act.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR91-344.

Yours very truly,

A handwritten signature in black ink, appearing to read "Kay Guajardo", with a long horizontal flourish extending to the right.

Kay H. Guajardo
Assistant Attorney General
Opinion Committee

KHG/mc

Enclosures: Open Records Decision Nos. 513, 411, 398, 286; return tape

cc: Ms. Jacquielynn Floyd
Staff Writer
Dallas Morning News
Communications Center
Dallas, Texas 75265